

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

CAROLE BRENDER,

Plaintiff,

v.

Civil Action No. 2:16-cv-09403

FRUTH PHARMACY, INC.,

Defendant.

NOTICE OF REMOVAL

Defendant Fruth Pharmacy, Inc., by counsel, John L. MacCorkle, Traci L. Wiley, and the law firm of MacCorkle Lavender, PLLC, hereby gives its Notice of Removal of this action from the Circuit Court of Kanawha County, West Virginia to the United States District Court for the Southern District of West Virginia, Charleston Division, pursuant to 28 United States Code §§ 1332, 1441, and 1446. This case is removable under diversity of citizenship because the citizenship of all parties is completely diverse and the amount in controversy exceeds the jurisdictional amount. In support of this Notice of Removal, Defendant states as follows:

1. On or about August 30, 2016, the Plaintiff, Carole Brender, filed a Complaint in the Circuit Court of Kanawha County, West Virginia, Civil Action No. 16-C-1332.

2. The Defendant, Fruth Pharmacy, Inc., a corporation, was served with the Complaint via the Secretary of State, and received the Summons and Complaint on September 6, 2016.

3. The Complaint alleges that, on July 29, 2015, Plaintiff Carole Brender was injured when she tripped and fell over a pallet display on the floor of a store owned by the Defendant Fruth Pharmacy, Inc. located in Putnam County, West Virginia. (See Complaint, at ¶¶ 4 and 8). According to the Complaint, as a result of the alleged incident, the Plaintiff suffered

severe injuries in and about her body for which reasonable and necessary medical expenses exceed the sum of \$123,383.98, to date. (See Compl. at ¶ 9). Plaintiff seeks compensatory damages for past and future medical expenses, past and future pain and suffering, loss of enjoyment of life and other impairments and disabilities. (See Compl. at ¶ 9).

4. Plaintiff Carole Brender is a resident and citizen of Flushing, Genesee County, Michigan. (See Compl. at ¶ 1).

5. Defendant Fruth Pharmacy, Inc. is a corporation registered in the State of West Virginia.

6. This civil action is one over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and which may be removed to this Court by the Defendant pursuant to the provisions of U.S.C. § 1441, because it is a civil action between citizens of different states wherein the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

7. The Plaintiff and the Defendant are citizens of different states. As such, the citizenship of the parties is completely diverse.

8. It is apparent from the face of the Complaint that Plaintiff seeks damages in excess of \$75,000, as the Complaint alleges that Plaintiff's past medical expenses incurred as a result of the subject incident already exceed \$123,000. As such, the amount in controversy exceeds the jurisdictional amount under 28 U.S.C. § 1332 (a).

9. Under West Virginia law, Plaintiff's recovery is theoretically unlimited and only a binding stipulation that she would not seek nor accept more than \$75,000.00 could limit recovery. See *Hicks v. Herbert*, 122 F.Supp.2d 699 (S.D.W.Va. 2000). The Plaintiff's

Complaint contains no such stipulation and also sets forth claims that the Plaintiff's injuries are permanent in nature.

10. As required by 28 U.S.C. §1446(b), this Notice of Removal is filed with this Court within thirty (30) days of receipt of the Complaint by the Defendant and, as such, this Notice of Removal has been timely filed.

11. Copies of all process, pleadings, and orders received by the Defendant in the Circuit Court of Kanawha County, West Virginia Civil Action Number 16-C-1332, are attached hereto and incorporated herein as **Exhibit A**.

12. Pursuant to Local Rule of Civil Procedure 3.4(b), a copy of the Circuit Court of Kanawha County, West Virginia, Civil Action No. 16-C-1332 docket sheet is attached hereto as **Exhibit B**.

13. As required by 28 U.S.C. §1446(d), a copy of this Notice of Removal is being served upon the Plaintiff, by and through her attorney of record, and upon the Clerk of the Circuit Court of Kanawha County, West Virginia. The Notice of Filing of Removal is attached hereto as **Exhibit C**.

14. All other requirements for removal pursuant to 28 U.S.C. § 1446(d) and the applicable rules have been complied with.

15. By filing this Notice of Removal, Defendant does not waive any defenses or admit any of Plaintiff's allegations. Defendant expressly reserves all available defenses, including but not limited to, those defenses enumerated in Federal Rule of Civil Procedure 12(b).

WHEREFORE, the Defendant, Fruth Pharmacy, Inc., respectfully requests that this Court assume full jurisdiction over the cause of action herein, as provided by law, and that the Circuit

Court of Kanawha County, West Virginia, proceed no further in the proceedings. Defendant further demands that the trial of this matter in federal court be heard by a jury.

FRUTH PHARMACY, INC.,

By Counsel

/s/ Traci L. Wiley

John L. MacCorkle, Esq. (WVSB #2286)

Traci L. Wiley, Esq. (WVSB #8080)

MacCorkle Lavender PLLC

300 Summers Street, Suite 800

Post Office Box 3283

Charleston, WV 25332.3283

(304) 344-5600

(304) 344-8141 (Fax)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

CAROLE BRENDER,

Plaintiff,

v.

Civil Action No.

FRUTH PHARMACY, INC.,

Defendant.

**CERTIFICATE OF COMPLIANCE
WITH 28 U.S.C. § 1446(d)**

Defendant, by counsel, hereby certifies that in accordance with 28 U.S.C. § 1446(d) written notice of the filing of the Notice Of Removal has been provided to all parties to this action and that a copy of the Notice Of Removal has been filed with the Clerk of the Circuit Court of Kanawha County, West Virginia.

FRUTH PHARMACY, INC.,

By Counsel

/s/ Traci L. Wiley

John L. MacCorkle, Esq. (WVSB #2286)

Traci L. Wiley, Esq. (WVSB #8080)

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

CAROLE BRENDER,

Plaintiff,

v.

Civil Action No.

FRUTH PHARMACY, INC.,

Defendant.

CERTIFICATE OF SERVICE

I, Traci L. Wiley, do hereby certify that on the 6th day of October, 2016, a true copy of the foregoing **NOTICE OF REMOVAL** was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Charles M. Love, IV, Esq.
The Love Law Firm, PLLC
405 Capitol Street, Suite 309
Charleston, WV 25301
Counsel for the Plaintiff

/s/ Traci L. Wiley

John L. MacCorkle, Esq. (WVSB #2286)

Traci L. Wiley, Esq. (WVSB #8080)

MacCorkle Lavender PLLC

300 Summers Street, Suite 800

Post Office Box 3283

Charleston, WV 25332.3283

(304) 344-5600

(304) 344-8141 (Fax)

JS 44 (Rev. 08/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Carole Brender

DEFENDANTS

Fruth Pharmacy, Inc.

(b) County of Residence of First Listed Plaintiff Genesee, MI

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Mason, WV

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Charles M. Love, IV

The Love Law Firm, PLLC

405 Capitol Street, Suite 309, Charleston, WV 25301

Attorneys (If Known)

John L. MacCorkle and Traci L. Wiley

MacCorkle Lavender, PLLC

P.O. Box 3283, Charleston, WV 25332

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332

Brief description of cause:

Diversity. Amount of controversy exceeds \$75,000.00.

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE
10/06/2016

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

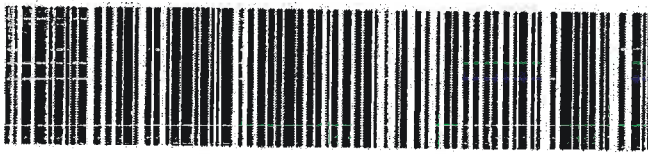
EXHIBIT A

Office of the Secretary of State
Building 1 Suite 157-K
1900 Kanawha Blvd E.
Charleston, WV 25305



Natalie E. Tennant
Secretary Of State
State Of West Virginia
Phone: 304-558-6000
866-767-8683
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9214 8801 1251 3410 0001 1964 91

FRUTH PHARMACY, INC.
LYNN FRUTH
4016 OHIO RIVER ROAD
POINT PLEASANT, WV 25550

Control Number: 114170

Defendant: FRUTH PHARMACY, INC.
4016 OHIO RIVER ROAD
POINT PLEASANT, WV 25550 US

Agent: LYNN FRUTH

County: Kanawha

Civil Action: 16-C-1332

Certified Number: 92148901125134100001196491

Service Date: 9/1/2016

I am enclosing:

1 Interrogatories, 1 request for production, 1 request for admissions, 1 summons and complaint

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in the name and on behalf of your corporation.

Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in the name and on behalf of your corporation as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper, not to the Secretary of State's office.

Sincerely,

A handwritten signature in cursive script that reads "Natalie E. Tennant".

Natalie E. Tennant
Secretary of State

Defendant details

Civil action #

16-C-1332 (/business/service-of-process/Home/Search?CivilActionNumber=16-C-1332)

Defendant

FRUTH PHARMACY, INC. (/business/service-of-process/Home/Search?DefendantName=FRUTH%20PHARMACY%2C%20INC.)

Agent

LYNN FRUTH

Country

US - UNITED STATES

County

Kanawha

Service date

Thursday, September 1, 2016

Certified number

92148901125134100001196491

Delivery date

Tuesday, September 6, 2016

USPS status

DELIVERED LEFT WITH INDIVIDUAL [details] (/business/service-of-process/Home/USPSStatusDetails/114170)

City/State/Zip

POINT PLEASANT, WV 25550

Was delivered

Yes

Signature image

View image (/business/service-of-process/Home/ViewImage/535e9c25-db78-e611-9473-00155dd48876)

Please note: USPS requires a signature whenever certified mail is returned to sender. When mail from the Secretary of State is returned, it is processed and signed by the state's central mailing office. If your mail was intended for a private entity (that is, anyone other than a state officer or agency) and the signature below is that of **Adam Robinson, Central Mailing Office, Danny Pauley, Jim Carter, Ronald Kushner or State of West Virginia**, then your mail was *NOT DELIVERED* and will be returned to the clerk of the appropriate court.

Home (<http://www.sos.wv.gov/pages/default.aspx>) | Contact Us (<http://www.sos.wv.gov/Pages/contact-us.aspx>) | Site Map (<http://www.sos.wv.gov/Pages/sitemap.aspx>) | Disclaimer (<http://www.sos.wv.gov/Pages/content-disclaimer.aspx>)



(<http://www.wv.gov>)

State Agency Directory (<http://www.wv.gov/Pages/agencies.aspx>) | Online Services (<http://www.wv.gov/Pages/services.aspx>)



Date Produced: 09/12/2016

WEST VIRGINIA SECRETARY OF STATE:

The following is the delivery information for Certified Mail™/RRE item number 9214 8901 1251 3410 0001 1964 91. Our records indicate that this item was delivered on 09/06/2016 at 12:43 p.m. in POINT PLEASANT, WV 25550. The scanned image of the recipient information is provided below.

Signature of Recipient :

A handwritten signature in black ink that appears to read "K. Fick".

Address of Recipient :

A handwritten address in black ink that appears to read "4215 RQ".

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 119649

SUMMONS
IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CAROLE BRENDER,

Plaintiff,

v.

Civil Action No. Ko-C-1332
(Honorable Huffman)

FRUTH PHARMACY, INC.,
a West Virginia corporation,

Defendant.

Agent: Lynne Fruth
4016 Ohio River Road
Point Pleasant, West Virginia 25550

To the above-named Defendant: **FRUTH PHARMACY, INC.**

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby Summoned and required to serve upon Charles M. Love, IV, plaintiff's attorney, whose address is 405 Capitol Street, Suite 309, West Virginia, 25301, an answer including any related counterclaim you may have to the Complaint filed against you in the above styled civil action, a true copy of which is herewith delivered to you along with a copy of "Plaintiff's First Set of Interrogatories to Defendant, Fruth Pharmacy, Inc.," "Plaintiff's First Set of Requests for Production of Documents to Defendant, Fruth Pharmacy, Inc.," and "Plaintiff's First Set of Requests for Admissions to Defendant, Fruth Pharmacy, Inc." You are required to serve your answer to the Complaint within thirty (30) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which

must be asserted by counterclaim in the above styled civil action. The attached discovery requests contain the information about when and how your responses to those requests may be made.

Dated: 8/30/16

Cathy S. Gatson, Clerk
Clerk of Court

By: H. Bailey

FILED
IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
2016 AUG 30 AM 10:50

CAROLE BRENDER,

Plaintiff,

v.

Civil Action No. 16-C-1332
(Honorable Yousman)

FRUTH PHARMACY, INC.,
a West Virginia corporation,

Defendant.

COMPLAINT

Comes now the plaintiff, Carole Brender, and for her complaint against the defendant, alleges and avers as follows:

COUNT I

1. That plaintiff, Carole Brender, is, and all times pertinent hereto, was a citizen of the State of Michigan, residing at or near Flushing, Michigan.
2. That defendant, Fruth Pharmacy, Inc., is, and at all times pertinent hereto was, a corporation organized and existing under the laws of the State of West Virginia, is authorized and qualified to do business in the State of West Virginia, with its principle place of business located in Point Pleasant, West Virginia.
3. Plaintiff's claim against defendant arises out of an incident occurring on July 29, 2015, on property which, to plaintiff's knowledge, information and belief, was owned, operated, maintained and/or controlled by defendant, Fruth Pharmacy, Inc., located at 3504 Winfield Road in Winfield, West Virginia, which property was otherwise

open for use by the public and, as such, any person who would come onto the premises was a business invitee of defendant, Fruth Pharmacy, Inc., and it had an affirmative duty to examine the premises for unsafe or dangerous conditions; correct any unsafe or dangerous conditions; and otherwise keep and maintain the premises in a safe condition.

4. That on and prior to July 29, 2015, the defendant, Fruth Pharmacy, Inc., placed a pallet display on the floor of the subject store. The pallet display contained no displayed merchandise and stood approximately four inches high.

5. The pallet display was not an open and obvious hazard due to its height and color and because it was concealed from view by surrounding displays designed to draw Mrs. Brender's and other customer's attention. As a direct and proximate result of the defendant's negligence in placing such a hazard in their store, the plaintiff tripped and fell over the pallet display seriously and permanently injuring herself on July 29, 2015.

6. That the defendant, Fruth Pharmacy, Inc., owned, operated, maintained and/or controlled the aforesaid store located at 3504 Winfield Road in Winfield, West Virginia, which it held open for and invited the public to use, including your plaintiff, and your plaintiff entered said premises on July 29, 2015, for the purpose of conducting business with the defendant, and, as such, plaintiff was a business invitee of this defendant on said date.

7. That defendant, Fruth Pharmacy, Inc., through its agents, servants and employees, who were acting within the scope of their employment, negligently, carelessly, wrongfully and unlawfully allowed the aforesaid pallet to remain empty,

unsafe and dangerous; failed to inspect the premises for this unsafe and dangerous pallet display; failed to warn its business invitees, including plaintiff, about this unsafe and dangerous pallet display; and failed to keep and maintain its premises in a safe condition.

8. That as a direct and proximate result of the defendant's negligent, careless, wrongful and unlawful conduct, as aforesaid, but not limited to the aforesaid, plaintiff was caused to fall and be injured.

9. As a direct and proximate result of the negligent, careless, wrongful and unlawful conduct as aforesaid, but not limited to the aforesaid, of the defendant, Fruth Pharmacy, Inc., the plaintiff, Carole Brender, was caused to be severely injured in and about her body for which reasonable and necessary medical expenses exceed the sum of \$123,383.98, to date, and inasmuch as part of her injuries are permanent and lasting in nature, she has and will in the future be caused to incur medical and medically related expenses and will be caused to suffer and have great pain of body and mind, loss of enjoyment of life and other impairments and disabilities.

WHEREFORE, the plaintiff, Carole Brender, demands judgment of and from the defendant, Fruth Pharmacy, Inc., for compensatory damages together with pre-judgment interest, post-judgment interest and costs.

COUNT II

Comes now the plaintiff, Carole Brender, and for Count II of her complaint against the defendant, alleges and avers as follows:

10. That she incorporates by reference paragraph nos. 1 through 9 of Count I into this Count II as if set forth herein verbatim.

11. That as a proximate result of defendant's conduct as aforesaid it created, maintained and allowed its premises to become a nuisance.

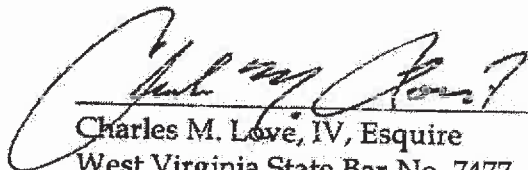
12. That as a direct and proximate result of the defendant's creation and maintenance of the nuisance, plaintiff, Carole Brender, was injured and sustained those same damages as alleged in Court I as if fully set forth herein.

WHEREFORE, the plaintiff, Carole Brender, demands judgment of and from the defendant, Fruth Pharmacy, Inc., for compensatory damages together with pre-judgment interest, post-judgment interest and costs.

PLAINTIFF DEMANDS A TRIAL BY JURY.

CAROLE BRENDER,

By Counsel,



Charles M. Love, IV, Esquire
West Virginia State Bar No. 7477
The Love Law Firm, PLLC
405 Capitol Street, Suite 309
Charleston, West Virginia 25301
(304) 344-5683
Counsel for Plaintiff
S:\2\0014\P001.docx

EXHIBIT B

FUNCTION = SEQ INQUIRY

CASE SCREEN 4

Case number : 16-C-1332

Action Log

CAROLE BRENDER

vs. FRUTH PHARMACY, INC.

Line	Date	Action / Results
1	08/30/16	# CASE INFO SHEET; COMPLAINT; ISSUED SUM & 2 CPYS; F FEE; RCPT
2		# 543444; \$200.00; COS AS TO P'S 1ST INTERROG'S, REQ FOR PROD &
3		# REQ FOR ADM'S
4	09/06/16	# LET FR SS DTD 9/1/16; SUM W/RET ON C & DISCOV (9/1/16 SS)
5		# AS TO FRUTH PHARMACY INC
6	09/13/16	# E-CERT FR SS AS TO FRUTH PHARMACY INC DTD 9/6/16

C=Chg D=Del 1-4=Scr M=Menu T=Chg Line# PgUp PgDn P=Prt A=Add I=Image _

EXHIBIT C

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CAROLE BRENDER,

Plaintiff,

v.

Civil Action No. 16-C-1332

Judge Kaufman

FRUTH PHARMACY, INC.,
a West Virginia corporation,

Defendant.

NOTICE OF FILING OF REMOVAL

TO:

Cathy S. Gatson, Clerk
Circuit Court of Kanawha County
Kanawha County Courthouse
111 Court Street
Charleston, WV 25301

Charles M. Love, IV, Esq.
The Love Law Firm, PLLC
405 Capitol Street, Suite 309
Charleston, WV 25301

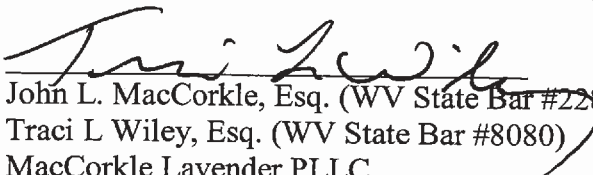
Please take notice that the undersigned has filed a Notice of Removal in the United States District Court for the Southern District of West Virginia, Charleston Division. Accordingly, the removal of this action to the United States District Court for the Southern District of West Virginia has been effected, and the Circuit Court of Kanawha County shall proceed no further unless and until the case is remanded pursuant to 28 U.S.C. §1446(d).

A copy of the Notice of Removal is attached hereto and incorporated herein as Exhibit A.

Dated: This 6th day of October, 2016

Fruth Pharmacy, Inc.

By Counsel,


John L. MacCorkle, Esq. (WV State Bar #2286)
Traci L Wiley, Esq. (WV State Bar #8080)
MacCorkle Lavender PLLC
300 Summers Street, Suite 800
Post Office Box 3283
Charleston, WV 25332.3283
(304) 344-5600

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CAROLE BRENDER,

Plaintiff,

v.

Civil Action No. 16-C-1332
Judge Kaufman

FRUTH PHARMACY, INC.,
a West Virginia corporation,

Defendant.

CERTIFICATE OF SERVICE

I, Traci L. Wiley, counsel for Defendant, Fruth Pharmacy, Inc., do hereby certify that on October 6, 2016, I served a true and correct copy of the foregoing "Notice of Filing of Removal" on all counsel of record, by depositing the same in the regular United States mail, postage prepaid, sealed in an envelope, and addressed as follows:

Charles M. Love, IV, Esq.
The Love Law Firm, PLLC
405 Capitol Street, Suite 309
Charleston, WV 25301
(304) 342-3106
Attorney for Plaintiff
Carole Brender

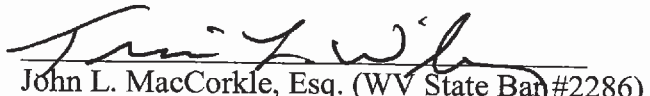

John L. MacCorkle, Esq. (WV State Bar #2286)
Traci L Wiley, Esq. (WV State Bar #8080)
MacCorkle Lavender PLLC
300 Summers Street, Suite 800
Post Office Box 3283
Charleston, WV 25332.3283
(304) 344-5600
(304) 344-8141 (Fax)

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

CAROLE BRENDER,

Plaintiff,

v.

Civil Action No.

FRUTH PHARMACY, INC.,

Defendant.

NOTICE OF REMOVAL

Defendant Fruth Pharmacy, Inc., by counsel, John L. MacCorkle, Traci L. Wiley, and the law firm of MacCorkle Lavender, PLLC, hereby gives its Notice of Removal of this action from the Circuit Court of Kanawha County, West Virginia to the United States District Court for the Southern District of West Virginia, Charleston Division, pursuant to 28 United States Code §§ 1332, 1441, and 1446. This case is removable under diversity of citizenship because the citizenship of all parties is completely diverse and the amount in controversy exceeds the jurisdictional amount. In support of this Notice of Removal, Defendant states as follows:

1. On or about August 30, 2016, the Plaintiff, Carole Brender, filed a Complaint in the Circuit Court of Kanawha County, West Virginia, Civil Action No. 16-C-1332.
2. The Defendant, Fruth Pharmacy, Inc., a corporation, was served with the Complaint via the Secretary of State, and received the Summons and Complaint on September 6, 2016.
3. The Complaint alleges that, on July 29, 2015, Plaintiff Carole Brender was injured when she tripped and fell over a pallet display on the floor of a store owned by the Defendant Fruth Pharmacy, Inc. located in Putnam County, West Virginia. (See Complaint, at ¶¶ 4 and 8). According to the Complaint, as a result of the alleged incident, the Plaintiff suffered

severe injuries in and about her body for which reasonable and necessary medical expenses exceed the sum of \$123,383.98, to date. (See Compl. at ¶ 9). Plaintiff seeks compensatory damages for past and future medical expenses, past and future pain and suffering, loss of enjoyment of life and other impairments and disabilities. (See Compl. at ¶ 9).

4. Plaintiff Carole Brender is a resident and citizen of Flushing, Genesee County, Michigan. (See Compl. at ¶ 1).

5. Defendant Fruth Pharmacy, Inc. is a corporation registered in the State of West Virginia.

6. This civil action is one over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and which may be removed to this Court by the Defendant pursuant to the provisions of U.S.C. § 1441, because it is a civil action between citizens of different states wherein the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

7. The Plaintiff and the Defendant are citizens of different states. As such, the citizenship of the parties is completely diverse.

8. It is apparent from the face of the Complaint that Plaintiff seeks damages in excess of \$75,000, as the Complaint alleges that Plaintiff's past medical expenses incurred as a result of the subject incident already exceed \$123,000. As such, the amount in controversy exceeds the jurisdictional amount under 28 U.S.C. § 1332 (a).

9. Under West Virginia law, Plaintiff's recovery is theoretically unlimited and only a binding stipulation that she would not seek nor accept more than \$75,000.00 could limit recovery. See *Hicks v. Herbert*, 122 F.Supp.2d 699 (S.D.W.Va. 2000). The Plaintiff's

Complaint contains no such stipulation and also sets forth claims that the Plaintiff's injuries are permanent in nature.

10. As required by 28 U.S.C. §1446(b), this Notice of Removal is filed with this Court within thirty (30) days of receipt of the Complaint by the Defendant and, as such, this Notice of Removal has been timely filed.

11. Copies of all process, pleadings, and orders received by the Defendant in the Circuit Court of Kanawha County, West Virginia Civil Action Number 16-C-1332, are attached hereto and incorporated herein as **Exhibit A**.

12. Pursuant to Local Rule of Civil Procedure 3.4(b), a copy of the Circuit Court of Kanawha County, West Virginia, Civil Action No. 16-C-1332 docket sheet is attached hereto as **Exhibit B**.

13. As required by 28 U.S.C. §1446(d), a copy of this Notice of Removal is being served upon the Plaintiff, by and through her attorney of record, and upon the Clerk of the Circuit Court of Kanawha County, West Virginia. The Notice of Filing of Removal is attached hereto as **Exhibit C**.

14. All other requirements for removal pursuant to 28 U.S.C. § 1446(d) and the applicable rules have been complied with.

15. By filing this Notice of Removal, Defendant does not waive any defenses or admit any of Plaintiff's allegations. Defendant expressly reserves all available defenses, including but not limited to, those defenses enumerated in Federal Rule of Civil Procedure 12(b).

WHEREFORE, the Defendant, Fruth Pharmacy, Inc., respectfully requests that this Court assume full jurisdiction over the cause of action herein, as provided by law, and that the Circuit

Court of Kanawha County, West Virginia, proceed no further in the proceedings. Defendant further demands that the trial of this matter in federal court be heard by a jury.

FRUTH PHARMACY, INC.,

By Counsel

/s/ Traci L. Wiley

John L. MacCorkle, Esq. (WVSB #2286)

Traci L. Wiley, Esq. (WVSB #8080)

MacCorkle Lavender PLLC

300 Summers Street, Suite 800

Post Office Box 3283

Charleston, WV 25332.3283

(304) 344-5600

(304) 344-8141 (Fax)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

CAROLE BRENDER,

Plaintiff,

v.

Civil Action No.

FRUTH PHARMACY, INC.,

Defendant.

**CERTIFICATE OF COMPLIANCE
WITH 28 U.S.C. § 1446(d)**

Defendant, by counsel, hereby certifies that in accordance with 28 U.S.C. § 1446(d) written notice of the filing of the Notice Of Removal has been provided to all parties to this action and that a copy of the Notice Of Removal has been filed with the Clerk of the Circuit Court of Kanawha County, West Virginia.

FRUTH PHARMACY, INC.,

By Counsel

/s/ Traci L. Wiley

John L. MacCorkle, Esq. (WVSB #2286)

Traci L. Wiley, Esq. (WVSB #8080)

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

CAROLE BRENDER,

Plaintiff,

v.

Civil Action No.

FRUTH PHARMACY, INC.,

Defendant.

CERTIFICATE OF SERVICE

I, Traci L. Wiley, do hereby certify that on the 6th day of October, 2016, a true copy of the foregoing **NOTICE OF REMOVAL** was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Charles M. Love, IV, Esq.
The Love Law Firm, PLLC
405 Capitol Street, Suite 309
Charleston, WV 25301
Counsel for the Plaintiff

/s/ Traci L. Wiley

John L. MacCorkle, Esq. (WVSB #2286)

Traci L. Wiley, Esq. (WVSB #8080)

MacCorkle Lavender PLLC

300 Summers Street, Suite 800

Post Office Box 3283

Charleston, WV 25332.3283

(304) 344-5600

(304) 344-8141 (Fax)

JS 44 (Rev. 08/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Carole Brender

DEFENDANTS

Fruth Pharmacy, Inc.

(b) County of Residence of First Listed Plaintiff Genesee, MI

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Mason, WV

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Charles M. Love, IV

The Love Law Firm, PLLC

405 Capitol Street, Suite 309, Charleston, WV 25301

Attorneys (If Known)

John L. MacCorkle and Traci L. Wiley

MacCorkle Lavender, PLLC

P.O. Box 3283, Charleston, WV 25332

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutional of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332

Brief description of cause:

Diversity. Amount of controversy exceeds \$75,000.00.

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE
10/06/2016

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

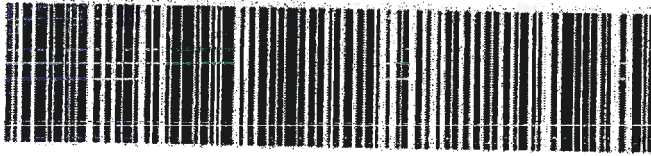
EXHIBIT A

Office of the Secretary of State
Building 1 Suite 157-K
1900 Kanawha Blvd E.
Charleston, WV 25305



Natalie E. Tennant
Secretary Of State
State Of West Virginia
Phone: 304-558-6000
866-767-8683
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9214 8901 1251 3410 0001 1964 91

FRUTH PHARMACY, INC.
LYNN FRUTH
4016 OHIO RIVER ROAD
POINT PLEASANT, WV 25550

Control Number: 114170

Defendant: FRUTH PHARMACY, INC.
4016 OHIO RIVER ROAD
POINT PLEASANT, WV 25550 US

Agent: LYNN FRUTH

County: Kanawha

Civil Action: 16-C-1332

Certified Number: 92148901125134100001196491

Service Date: 9/1/2016

I am enclosing:

1 interrogatories, 1 request for production, 1 request for admissions, 1 summons and complaint.

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in the name and on behalf of your corporation.

Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in the name and on behalf of your corporation as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper, not to the Secretary of State's office.

Sincerely,

A handwritten signature in cursive script that reads "Natalie E. Tennant".

Natalie E. Tennant
Secretary of State

Defendant details

Civil action #

16-C-1332 (/business/service-of-process/Home/Search?CivilActionNumber=16-C-1332)

Defendant

FRUTH PHARMACY, INC. (/business/service-of-process/Home/Search?DefendantName=FRUTH%20PHARMACY%2C%20INC.)

Agent

LYNN FRUTH

Country

US - UNITED STATES

County

Kanawha

Service date

Thursday, September 1, 2016

Certified number

92148901125134100001196491

Delivery date

Tuesday, September 6, 2016

USPS status

DELIVERED LEFT WITH INDIVIDUAL [details] (/business/service-of-process/Home/USPSStatusDetails/114170)

City/State/Zip

POINT PLEASANT, WV 25550

Was delivered

Yes

Signature image

View image (/business/service-of-process/Home/ViewImage/535e9c25-db78-e611-9473-00155dd48876)

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 (<http://www.wv.gov>)

State Agency Directory (<http://www.wv.gov/Pages/agencies.aspx>) | Online Services (<http://www.wv.gov/Pages/services.aspx>)



Date Produced: 09/12/2016

WEST VIRGINIA SECRETARY OF STATE:

The following is the delivery information for Certified Mail™/RRE item number 9214 8901 1251 3410 0001 1964 91. Our records indicate that this item was delivered on 09/06/2016 at 12:43 p.m. in POINT PLEASANT, WV 25550. The scanned image of the recipient information is provided below.

Signature of Recipient :

A handwritten signature in black ink that reads "K. Fick".

Address of Recipient :

A handwritten address in black ink that reads "4015 1st St, Point Pleasant, WV".

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

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Customer Reference Number: 119649

SUMMONS
IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CAROLE BRENDER,

Plaintiff,

v.

Civil Action No. K.C. 1332
(Honorable Y. C. Smith)

FRUTH PHARMACY, INC.,
a West Virginia corporation,

Defendant.

Agent: Lynne Fruth
4016 Ohio River Road
Point Pleasant, West Virginia 25550

To the above-named Defendant: **FRUTH PHARMACY, INC.**

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby Summoned and required to serve upon Charles M. Love, IV, plaintiff's attorney, whose address is 405 Capitol Street, Suite 309, West Virginia, 25301, an answer including any related counterclaim you may have to the Complaint filed against you in the above styled civil action, a true copy of which is herewith delivered to you along with a copy of "Plaintiff's First Set of Interrogatories to Defendant, Fruth Pharmacy, Inc.," "Plaintiff's First Set of Requests for Production of Documents to Defendant, Fruth Pharmacy, Inc.," and "Plaintiff's First Set of Requests for Admissions to Defendant, Fruth Pharmacy, Inc." You are required to serve your answer to the Complaint within thirty (30) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which

must be asserted by counterclaim in the above styled civil action. The attached discovery requests contain the information about when and how your responses to those requests may be made.

Dated: 8/30/16

Cathy S. Gafson, Clerk

Clerk of Court

By: A. Bailey

FILED
2016 AUG 30 AM 10:50
IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CLERK OF COURT
KANAWHA COUNTY CIRCUIT COURT

CAROLE BRENDER,

Plaintiff,

v.

Civil Action No. K-C-1332
(Honorable Youngman)

FRUTH PHARMACY, INC.,
a West Virginia corporation,

Defendant.

COMPLAINT

Comes now the plaintiff, Carole Brender, and for her complaint against the defendant, alleges and avers as follows:

COUNT I

1. That plaintiff, Carole Brender, is, and all times pertinent hereto, was a citizen of the State of Michigan, residing at or near Flushing, Michigan.
2. That defendant, Fruth Pharmacy, Inc., is, and at all times pertinent hereto was, a corporation organized and existing under the laws of the State of West Virginia, is authorized and qualified to do business in the State of West Virginia, with its principle place of business located in Point Pleasant, West Virginia.
3. Plaintiff's claim against defendant arises out of an incident occurring on July 29, 2015, on property which, to plaintiff's knowledge, information and belief, was owned, operated, maintained and/or controlled by defendant, Fruth Pharmacy, Inc., located at 3504 Winfield Road in Winfield, West Virginia, which property was otherwise

open for use by the public and, as such, any person who would come onto the premises was a business invitee of defendant, Fruth Pharmacy, Inc., and it had an affirmative duty to examine the premises for unsafe or dangerous conditions; correct any unsafe or dangerous conditions; and otherwise keep and maintain the premises in a safe condition.

4. That on and prior to July 29, 2015, the defendant, Fruth Pharmacy, Inc., placed a pallet display on the floor of the subject store. The pallet display contained no displayed merchandise and stood approximately four inches high.

5. The pallet display was not an open and obvious hazard due to its height and color and because it was concealed from view by surrounding displays designed to draw Mrs. Brender's and other customer's attention. As a direct and proximate result of the defendant's negligence in placing such a hazard in their store, the plaintiff tripped and fell over the pallet display seriously and permanently injuring herself on July 29, 2015.

6. That the defendant, Fruth Pharmacy, Inc., owned, operated, maintained and/or controlled the aforesaid store located at 3504 Winfield Road in Winfield, West Virginia, which it held open for and invited the public to use, including your plaintiff, and your plaintiff entered said premises on July 29, 2015, for the purpose of conducting business with the defendant, and, as such, plaintiff was a business invitee of this defendant on said date.

7. That defendant, Fruth Pharmacy, Inc., through its agents, servants and employees, who were acting within the scope of their employment, negligently, carelessly, wrongfully and unlawfully allowed the aforesaid pallet to remain empty,

unsafe and dangerous; failed to inspect the premises for this unsafe and dangerous pallet display; failed to warn its business invitees, including plaintiff, about this unsafe and dangerous pallet display; and failed to keep and maintain its premises in a safe condition.

8. That as a direct and proximate result of the defendant's negligent, careless, wrongful and unlawful conduct, as aforesaid, but not limited to the aforesaid, plaintiff was caused to fall and be injured.

9. As a direct and proximate result of the negligent, careless, wrongful and unlawful conduct as aforesaid, but not limited to the aforesaid, of the defendant, Fruth Pharmacy, Inc., the plaintiff, Carole Brender, was caused to be severely injured in and about her body for which reasonable and necessary medical expenses exceed the sum of \$123,383.98, to date, and inasmuch as part of her injuries are permanent and lasting in nature, she has and will in the future be caused to incur medical and medically related expenses and will be caused to suffer and have great pain of body and mind, loss of enjoyment of life and other impairments and disabilities.

WHEREFORE, the plaintiff, Carole Brender, demands judgment of and from the defendant, Fruth Pharmacy, Inc., for compensatory damages together with pre-judgment interest, post-judgment interest and costs.

COUNT II

Comes now the plaintiff, Carole Brender, and for Count II of her complaint against the defendant, alleges and avers as follows:

10. That she incorporates by reference paragraph nos. 1 through 9 of Count I into this Count II as if set forth herein verbatim.

11. That as a proximate result of defendant's conduct as aforesaid it created, maintained and allowed its premises to become a nuisance.

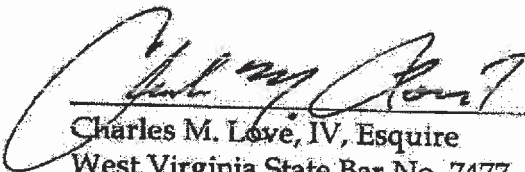
12. That as a direct and proximate result of the defendant's creation and maintenance of the nuisance, plaintiff, Carole Brender, was injured and sustained those same damages as alleged in Court I as if fully set forth herein.

WHEREFORE, the plaintiff, Carole Brender, demands judgment of and from the defendant, Fruth Pharmacy, Inc., for compensatory damages together with pre-judgment interest, post-judgment interest and costs.

PLAINTIFF DEMANDS A TRIAL BY JURY.

CAROLE BRENDER,

By Counsel,



Charles M. Love, IV, Esquire
West Virginia State Bar No. 7477
The Love Law Firm, PLLC
405 Capitol Street, Suite 309
Charleston, West Virginia 25301
(304) 344-5683
Counsel for Plaintiff
S:\2\0014\P001.docx

EXHIBIT B

FUNCTION = SEQ INQUIRY

CASE SCREEN 4

Case number : 16-C-1332

Action Log

CAROLE BRENDER

vs. FRUTH PHARMACY, INC.

Line	Date	Action / Results
1	08/30/16	# CASE INFO SHEET; COMPLAINT; ISSUED SUM & 2 CPYS; F FEE; RCPT
2		# 543444; \$200.00; COS AS TO P'S 1ST INTERROG'S, REQ FOR PROD &
3		# REQ FOR ADM'S
4	09/06/16	# LET FR SS DTD 9/1/16; SUM W/RET ON C & DISCOV (9/1/16 SS)
5		# AS TO FRUTH PHARMACY INC
6	09/13/16	# E-CERT FR SS AS TO FRUTH PHARMACY INC DTD 9/6/16

C=Chg D=Del 1-4=Scr M=Menu T=Chg Line# PgUp PgDn P=Prt A=Add I=Image